

1 **UNITED STATES DISTRICT COURT**

2 **DISTRICT OF NEVADA**

3 FRANK M. HERNANDEZ,

4 Plaintiff

5 v.

6 PERRY RUSSELL, et al.,

7 Defendants

Case No.: 3:20-cv-00114-MMD-CSD

Order

Re: ECF No. 104

8
9 Before the court is Plaintiff's motion for an unspecified extension of time to serve
10 Lennon. (ECF No. 104.)

11 Plaintiff's complaint was screened on March 3, 2021, and Plaintiff was allowed to
12 proceed with a single claim of Eighth Amendment excessive force against defendants Lennon
13 and Craig. (ECF No. 7.) Following a stay while the parties unsuccessfully attempted to settle this
14 matter, the court issued an order on May 26, 2021, giving Plaintiff 90 days, until August 24,
15 2021, to perfect service. (ECF No. 15.) A summons was issued for Lennon on June 10, 2021
16 (ECF No. 20), and it was returned unexecuted on July 8, 2021 (ECF No. 22). The court then
17 twice directed the Office of the Attorney General (OAG) to file a notice indicating whether it had
18 an alternative address for Lennon. (ECF No. 30, 36.) The OAG filed a notice that it was unable
19 to locate an alternative address. (ECF No. 31, 37.)

20 A notice of intent to dismiss Lennon under Federal Rule of Civil Procedure 4(m) was
21 issued on January 4, 2022, giving Plaintiff until February 3, 2022, to file a proof of service for
22 Lennon. (ECF No. 40.) Plaintiff then filed a motion for service by publication (ECF No. 43),
23 which was denied. However, the court gave Plaintiff an additional 45 days, until March 21, 2022,

1 to complete service as to Lennon. (ECF No. 46.) As a result of Plaintiff not receiving that order,
2 and the mistaken dismissal of Lennon under Rule 4(m), Lennon was reinstated and given an
3 additional 60 days, until September 12, 2022, to complete service as to Lennon. (ECF Nos. 76,
4 77.)

5 Plaintiff filed another motion to serve Lennon, and the court issued a summons for
6 Lennon and extended the service deadline to October 24, 2022. (ECF Nos. 80, 81, 82.) The
7 summons was returned unexecuted on September 16, 2022. (ECF No. 89.) Plaintiff filed yet
8 another motion for the U.S. Marshal to service, which the court denied, reminding Plaintiff the
9 deadline to serve Lennon was October 24, 2022. (ECF Nos. 90, 91.) Plaintiff objected to that
10 ruling, which Chief District Judge Du overruled. (ECF No. 92, 94.)

11 A notice of intent to dismiss Lennon under Rule 4(m) was issued on November 21, 2022,
12 giving Plaintiff until December 21, 2022, to serve Lennon or he will be dismissed without
13 prejudice. (ECF No. 97.)

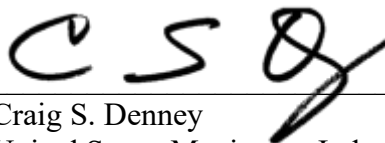
14 On December 2, 2022, the court issued an order granting Plaintiff's motion for the
15 issuance of a summons so Plaintiff could try to serve Lennon through a private process server.
16 The court specifically reminded Plaintiff that he was required to file a proof of service for
17 Lennon by **December 21, 2022**, or Lennon will be dismissed without prejudice under Federal
18 Rule of Civil Procedure 4(m). (ECF Nos. 101, 102.)

19 It has been 476 days since the original deadline to complete service as to Lennon, and we
20 have reached the point where this case must move forward, with or without Lennon. Plaintiff has
21 had ample time to complete service on Lennon. Therefore, Plaintiff's latest motion (ECF No.
22 104) is **DENIED**. Plaintiff must file a proof of service as to Lennon by **December 21, 2022**, or
23

1 Lennon will be dismissed from this action without prejudice under Federal Rule of Civil
2 Procedure 4(m).

3 **IT IS SO ORDERED.**

4 Dated: December 13, 2022

5 
6 Craig S. Denney
United States Magistrate Judge